Union Carbide Corporation-Nuclear Division *and* Office and Professional Employees International Union, AFL-CIO. Case 10-CA-15949

January 7, 1981

DECISION AND ORDER

On June 16, 1981, Administrative Law Judge Hutton S. Brandon issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Union Carbide Corporation-Nuclear Division, Oak Ridge, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 2(b):

"(b) Post at its two Oak Ridge, Tennessee, plant facilities (ORNL(X-10) and Y-12) copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by a representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material."

DECISION

STATEMENT OF THE CASE

HUTTON S. BRANDON, Administrative Law Judge: This case was heard before me in Knoxville, Tennessee, on April 29, 1981. The charge was filed by Office and Professional Employees International Union, AFL-CIO, herein called the Union, on June 18, 1980,[1] and the complaint in the case issued on August 15, alleging that Union Carbide Corporation-Nuclear Division, herein called Respondent or the Company, violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act, beginning around mid-May. More specifically, the complaint alleges that Respondent violated Section 8(a)(l) of the Act by removing, contrary to past practice, notices of union activities from its bulletin boards, by removing an employee petition involving union and protected concerted activities from an employee breakroom, by confiscating from employees notices of union meetings, by threatening employees with loss of personal and sick leave benefits if they designated the Union as their collective-bargaining agent, by soliciting employees to report to it the identity of employees who join or engage in activities on behalf of the Union, and by threatening employees with disciplinary action if they joined or engaged in activities on behalf of the Union. The complaint also alleges that Respondent violated Section 8(a)(3) and (1) of the Act by denying its employee Jean Kiel use of the Company's telephone, by reprimanding her, and by prohibiting, contrary to past practice, Kiel from talking about the Union with fellow employees during worktime.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a New York corporation with an office, plant, and a place of business located at Oak Ridge, Tennessee, where it is engaged in operating certain laboratories and nuclear facilities. During the calendar year preceding issuance of the complaint, Respondent sold and shipped finished products valued in excess of $50,000 from its Oak Ridge facilities directly to customers located outside the State of Tennessee. The complaint alleges, Respondent by its answer thereto admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] Although the Administrative Law Judge stated that *Essex International, Inc.*, 211 NLRB 749 (1974), reflects current Board law, his statement is dictum and, moreover, he was unaware that *Essex* has been overruled by the subsequently issued decision in *T.R.W. Bearing Division, a Division of T.R.W., Inc.*, 257 NLRB No. 47 (1981).

[2] Respondent has excepted to the Administrative Law Judge's recommendation that Respondent be required to post the notice to employees at each of its three Oak Ridge facilities (ORNL(X-10), ORGDP(K-25), and Y-12). Inasmuch as the conduct found unlawful herein occurred only at the X-10 and Y-12 facilities, and because there is no showing that the unfair labor practices found herein had an impact on the organizational activities at the K-25 facility, we find that the record is insufficient to require Respondent to post the notice at the K-25 facility, we shall limit the posting requirement to the two facilities where the unfair labor practices occurred. *Read's, Inc.*, 228 NLRB 1402 (1977).

[1] All dates are in 1980 unless otherwise stated.

II. THE UNFAIR LABOR PRACTICES

A. *The Removal of the Union's Notices From Plant Bulletin Boards and the Confiscation of Union Material From Employees*

Respondent operates three separate plant facilities in and around Oak Ridge utilizing some 17,817 employees represented by 20 various craft labor organizations in a coalition called the Atomic Trades and Labor Council (ATLC). Each plant facility which may consist of many different plant buildings and which may cover several square acres has a different function and/or product. Thus, the Oak Ridge National Laboratory (ORNL) is one plant facility engaged primarily in research and development and is referred to as the X-10 plant. The Oak Ridge Gaseous Diffusion Plant (ORGDP) is engaged in enriched uranium production and is referred to as the K-25 plant, while the third facility, known as the Y-12 plant, is engaged in weapons production. The plant facilities may be separated from each other by several miles and one of the plants is located in an adjoining county.

Respondent maintains bulletin boards in various of its buildings throughout all three of its plant facilities. The collective-bargaining agreement between Respondent and the ATLC, effective June 1978 through June 1981, and covering the Y-12 plant contains a provision on bulletin boards at article 15, section 1. That provision reads as follows:

> The Company shall provide the Union with suitable bulletin boards for the purpose of posting notices of union meetings and union social events. Any other material must be approved by the Company prior to posting.

An identical provision is contained in article 16, section 1, of the collective-bargaining agreement between the ATLC and Respondent applicable to the X-10 plant.

The Charging Party Union herein began its organizational campaign among Respondent's office employees at all three of Respondent's plants in mid-March. In connection with that campaign the Union prepared printed announcements of an open house held each Wednesday at a given location and time and invited employees of Respondent to attend. Employees were further invited in the announcement to call a specific telephone number for further information. These printed announcements were distributed to a number of Respondent's employees by the Union. One such employee, James Gilbert Diden, employed by Respondent in the Y-12 plant, testified that he distributed some of the Union's announcements to employees and about mid-June began posting the announcement on the bulletin board just outside the machine shop office[2] at building 9204-2 at the Y-12 plant. Diden testified that he was aware of no restrictions on the use of the bulletin board and had frequently seen the bulletin board used by individual employees to announce private items for sale, such as trucks, cars, motorcycles, and CB radios.

Diden testified that he experienced some difficulty in keeping the union announcement posted and over a period of about 1 week found it necessary to replace removed notices about 12 times. Diden was ultimately advised by other employees that supervisors, including Paul R. Wilson, the fabrication division general foreman and an admitted supervisor, were removing the announcements. Diden testified without contradiction that on or about June 20 he approached Wilson and asked him why the signs were being taken down. Wilson replied, according to Diden, "You are not recognized." Subsequently, on the same day, Diden observed Wilson remove one of Diden's announcements from the bulletin board, an announcement that Diden had posted only a short time before. Diden related that he had never seen anyone in supervision remove notices from the bulletin board before. He also added that the notices posted for personal items had remained on the bulletin board for from 2 to 4 weeks. According to Diden, the practice was that the employee who posted the notice on the bulletin board removed his own notice.

Wilson was not called as a witness by Respondent and Diden's testimony was thus not contradicted. On the other hand, his testimony received support from that of employee Jerry Peddicord who testified that he was aware of no restrictions on the use of the bulletin boards in the Y-12 facility where he worked. He related that he saw Wilson remove six different union notices from the bulletin board used by Diden. Moreover, Peddicord testified that he personally used the bulletin board in the Y-12 facility to announce personal items for sale. He received no prior approval from anyone and personally removed the notices on the sale of the items referred to in the posted material. One of his notices on a personal item remained posted for 3 months.

Peddicord further testified that he posted several of the Union's announcements on different bulletin boards in Y-12 facility buildings including the one in a facility cafeteria specifically identified as a "union" bulletin board. This also included bulletin boards in the areas of Y-12 where the production employees were represented by the Chemical Workers International Union, another member of the ATLC. While Peddicord related that he knew of no complaints by any union to his postings he observed salaried personnel, not identified as supervisors, remove them.

On June 26, according to Peddicord, Peddicord took a packet of about 25 of the Union's meeting notices into the plant and placed them in his desk drawer. After lunch that day he found that his notices were missing.[3] Subsequently, he had occasion to go to the desk of Wilson to get a tool and, in going through the drawers of the desk, observed the Union's notices he had brought in that morning, identifying them by the manner in which he had folded them for carrying in his shift pocket. He did not confront Wilson about the matter and was told only about a week prior to the hearing herein

[2] It appears that the bulletin board was located in the work area of production and maintenance employees represented by Machinists Local Union 480, one of the craft unions in the ATLC. According to Diden, Machinists notices of meetings were posted on this bulletin board from time to time, apparently with no interference from management.

[3] Peddicord conceded that his desk was accessible to other employees looking for tools also retained in his desk drawers.

by Wilson that Wilson did not take the announcements from Peddicord. Nevertheless, Peddicord's testimony on the matter was credible and uncontradicted. Moreover, while Wilson may belatedly have denied taking the union's meeting notices he did not deny that he had had them in his possession, and obviously he did not return them to Peddicord. Accordingly, in the absence of any denial under oath at the hearing by Wilson, and because it is undenied that he removed similar notices when he saw them posted on bulletin boards, I believe it not unreasonable to infer that Wilson either took the announcements from Peddicord or they were taken with his knowledge and approval.

As the Board said in *Container Corporation of America*, 244 NLRB 318 (1979):

> It is well established that there is no statutory right of employees or a union to use an employer's bulletin board. However, it is also well established that when an employer permits, by formal rule or otherwise, employees and a union to post personal and official union notices on its bulletin boards, the employees' and union's right to use the bulletin board receives the protection of the Act to the extent that the employer may not remove notices, or discriminate against an employee who posts notices, which meet the employer's rule or standard but which the employer finds distasteful.

Here Respondent contractually granted to ATLC unions the right to post notices of union meetings and union social events. While the contracts made other postings subject to Respondent's prior approval it is clear from the credited testimony of Diden and Peddicord that, in practice, postings for personal items by individual employees, even unrepresented clerical employees, were not subjected to Respondent's prior approval. Indeed, there was no evidence of policing of the bulletin boards by Respondent except for the removal of the Union's meeting notices herein. It thus appears, and I conclude, that, in practice, Respondent did not have a restrictive policy with respect to employee use of the bulletin boards and had no previous policy of "policing" the bulletin boards.

Even where an employer has permitted the posting of personal notices by employees on its bulletin boards as well as official union notices regarding meetings, elections, and nominations, it may nevertheless legitimately bar use of the bulletin boards for rival partisan internal union campaigns which could be conducive to continual strife between rival factions and which could make the bulletin boards a battleground for competing groups. *Nugent Service, Inc.*, 207 NLRB 158 (1973). Further, the Board held in *Armco Steel Corporation*, 148 NLRB 1179 (1964), that the contractual reservation of a bulletin board for the exclusive use of an incumbent union does not violate Section 8(a)(1) of the Act since such reservation constitutes a collective-bargaining concession which, when granted by an employer, may be accompanied by such usage regulations that the employer deems appropriate.

In the case *sub judice*, however, the posting of the notices of the Union's campaign meetings was not the posting of "rival" factions within the incumbent unions. Nor was it even posting of notices by a rival union. Indeed, there was no evidence that any of the incumbent unions objected to the meeting notices posted regarding the Union. Such notices could not be the basis for strife or discipline problems. Thus, since Respondent had allowed the indiscriminate use of its bulletin boards by employees for personal items without regard to any contractual reservations or prior approval, I conclude that it had waived such reservations. It follows that Respondent could not lawfully remove the Union's notices here.[4] Accordingly, I find and conclude that, in removing the posted material regarding the Union here, Respondent violated Section 8(a)(1) of the Act as alleged.

I further find that Wilson's confiscation of Peddicord's union notices also violated Section 8(a)(1) of the Act inasmuch as it clearly interfered with his right to possess and distribute his material in nonwork areas on nonworktime. See *Photo-Sonics, Inc., Instrumentation Marketing Corporation; Photo Digitizing Systems, Inc.*, 254 NLRB 567 (1981).

B. *The Threatened Loss of Benefits*

Diden briefly testified regarding a comment made to him by H. E. Hamilton, a dispatching supervisor, on June 25 in Diden's building at the Y-12 facility. According to Diden, Hamilton remarked that if the office employees did organize there was a possibility that they would lose their personal leave with pay and their sick leave with pay. Diden could not recall the context in which Hamilton's remark was made or any other circumstances surrounding the statement, but explained that what he did recall "just happened to register."

While Diden's testimony regarding Hamilton's statement is weak and suspect because of his failure to recall the context in which it was made, such testimony was not contradicted because Hamilton was not called to testify. Accordingly, and because Diden appeared to be a truthful and reliable witness, I credit Diden's testimony regarding Hamilton.

Hamilton's statement points to the "possibility" of a loss of certain benefits as a result of union organization. Without explanation or clarification the statement is clearly subject to the interpretation that the risk of the loss stems directly from the fact of organization rather than from the collective-bargaining process. It is the reasonable tendency of Hamilton's remark to coerce which is critical to the finding of a violation, not the existence of actual coercion of employees or unlawful motivation on Hamilton's part. *El Rancho Market*, 235 NLRB 468 (1978); *American Freightways Co., Inc.*, 124 NLRB 146 (1959). Without explanation or clarification I find and conclude that Hamilton's remark to Diden did tend to coerce and restrain employees in their Section 7 rights

[4] See *Special Machine and Engineering, Inc.*, 247 NLRB 884 (1980); *Container Corporation, supra; Group One Broadcasting Co., West*, 222 NLRB 993 (1976); *Nugent Service, Inc., supra; Tempco Manufacturing Company, Inc.*, 177 NLRB 336 (1969); *Challenge Cooke Brothers of Ohio, Inc.*, 153 NLRB 92 (1965).

and that Respondent by Hamilton's remark violated Section 8(a)(1) of the Act as alleged.

C. *The Taxpayers' Petition*

Curtis Hammontree, an employee in the mechanical department of Respondent's X-10 plant and the chief steward of Millwright and Carpenters Local 2738 which represents certain of Respondent's employees in that plant, testified for the General Counsel that on June 16 he placed a petition given him by Bob Kiel, president of ATLC, in the lunchroom of building 2013 at the X-10 facility. The petition, captioned "Taxpayers' Petition," contained the following language:

> We, the undersigned, object to Union Carbide corporation's use of *our tax dollars* for anti-union activities. The United States Government is officially in favor of collective bargaining. We therefore call upon congress and the president to investigate and stop this improper use of our taxes.

Under the above language was space for signatures and, following that, the instructions to return the petition to the Union at a given address.

Hammontree testified that the petition remained in the lunchroom for 3 or 4 days. When he went back to pick up the petition he could not find it in the lunchroom. A supervisor named Earl Chapman reported to Hammontree that the petition had been picked up by John Fields, a general foreman and an admitted supervisor within the meaning of the Act. Hammontree, in the presence of 45 another steward, Austin Massengill, and at the direction of Kiel, went to Fields' office to retrieve the petition. There Hammontree asked Fields for the petition but Fields related he had turned it in to the labor relations department. Hammontree asked Fields why he had picked it up and Fields replied that it was not acceptable to the Company. Hammontree's testimony on this matter is generally supported by Massengill who also testified. Therefore, and because he was not contradicted by any Respondent witness, Hammontree is credited.

It was also Hammontree's uncontradicted testimony that it was not unusual for employees to leave collection jars and sign-up sheets in the lunchroom for employees retiring or experiencing tragedy or other difficulty. The procedure was for employees to place money in the jar if they desired to contribute and then sign a sheet by the jar showing the amount contributed. These papers, according to Hammontree, were never disturbed by Respondent.

Respondent argues that it always had an unwritten policy against allowing political activity on its premises since its facilities were supported by Federal Government funds. In keeping with this policy, and because it viewed the "Taxpayers' Petition" as a political activity, it admittedly picked up Hammontree's petition.

The rights of employees under Section 7 of the Act are not without limitations and must be balanced with an employer's right to regulate his property. *Republic Aviation Corporation* v. *N.L.R.B.*, 324 U.S. 793 (1945). And the Board has previously held that it is not unlawful for an employer to bar distribution on its premises of wholly political propaganda which does not relate to employees' problems and concerns *qua* employees. *Ford Motor Company*, 221 NLRB 663, 666 (1975), enfd. 546 F.2d 418 (3d Cir. 1976). But where the material distributed contains matters impacting on the employees' working conditions its distribution may not be lawfully barred because it also has political overtones or contains "social comment." See *Samsonite Corporation, Inc.*, 206 NLRB 343 (1973). In the case *sub judice* the taxpayers' petition in my judgment does have direct impact on the employees' working conditions and, more specifically, their right to organize in order to change or effect such conditions. The petition, rather than seeking to persuade the selection of some political candidate or to influence the endorsement of a political party or platform, sought only to invoke the attention and aid of the President and Congress in enforcing a national policy on collective bargaining. The "problem" identified in the petition was the perception that Respondent, subsidized by Government funds, was utilizing such funds to thwart national policy by combating union organizational efforts. Thus, the petition, whether the premise on which it was based was ill founded or not, was directly related to employee working conditions as affected by their right to organize. It therefore constituted a distribution of material "pertinent to a matter which is encompassed by Section 7 of the Act." *McDonnell Douglas Corporation*, 210 NLRB 280 (1973).

I find and conclude that the taxpapers' petition was clearly a concerted and a union activity since it was produced by the Union and distributed through the ATLC. The distribution of union literature or material may not be lawfully barred in nonwork areas on nonworktime absent special circumstances not shown here. *Republic Aviation, supra.* Accordingly, I find that Respondent by confiscating the taxpayers' petition from a nonwork area violated Section 8(a)(1) of the Act as alleged in the complaint.

D. *The Solicitation To Report Union Employees*

The complaint alleges that on May 21 Respondent, by distributing a document entitled "Freedom From Harassment—A Fact Sheet" to its employees, solicited its employees to report to Respondent the identity of employees who supported the Union. Bob Worrell, Respondent's labor relations manager for its Nuclear Division, admitted that around May 21 certain leaflets were distributed to employees in response to the Union's campaign. One of those leaflets bore the caption specified above in the complaint allegation and stated:

> The N.L.R.A. states that employees have the right to refrain from all or any labor union activities.
>
> The same law also makes it an unfair labor practice for a labor organization to restrain or coerce employees in the exercise of their rights to refrain from labor union activities.
>
> Company rules are designed to protect employees while at work. This protection includes protection from harassment of employees while at work or on

> the premises. Any such harassment should be reported to supervision.
>
> Thus any employee threatened, coerced or harassed because of exerting his/her right to refrain from labor union activities, including a refusal to sign a card, has dual protection by supervision and by the National Labor Relations Board if he/she desires to file a charge.

The General Counsel argues that the leaflet constitutes a solicitation to report legitimate union activity or solicitation. Respondent on the other hand argues that it does not, and that it only seeks to preclude that type of union activity which threatens, coerces, or harasses employees.

Recently the Board in *Bil-Mar Foods of Ohio, Inc.*, 255 NLRB 1254 (1981), had occasion to reaffirm the principle that an employer's request that employees report instances in which employees were "put under pressure to join the union" was violative of Section 8(a)(1) of the Act. The rationale for such a finding as stated in *J. H. Block & Co., Inc.*, 247 NLRB 262 (1980), is that such requests to report have "the potential dual effect of encouraging employees to report to Respondent the identity of union card solicitors who in any way approach employees in a manner subjectively offensive to the solicited employees, and of correspondingly discouraging card solicitors in their protected organizational activities." Thus, consistent with this rationale the Board has found violations of the Act where an employer solicited employees to report union activity that caused them "trouble" or put them "under any pressure" (*Sunnyland Packing Company*, 227 NLRB 590, 594–595 (1976), enfd. 557 F.2d 1157 (5th Cir. 1977), and *Colony Printing and Labeling, Inc.*, 249 NLRB 223 (1980); that amounted to "pestering or pressure" or being "bothered" (*Lutheran Hospital of Milwaukee, Incorporated*, 224 NLRB 176, 178 (1976)); that constituted a failure to leave employees alone (*Poloron Products of Mississippi, Inc.*, 217 NLRB 704, 707 (1975); or that amounted to being "threatened in any way or subjected to constant badgering" (*Bank of St. Louis*, 191 NLRB 669, 673 (1971)). And in *Bil-Mar, supra*, the Board found an employer's request of employees to report union activity which "harassed, coerced, pressured, or threatened them" to constitute conduct warranting a rerun election.

The Board's rationale in the above-cited cases appears to be applicable to the language in the leaflets in the case *sub judice*. And the language of the leaflet here, particularly the reference to harassment, falls within the realm of language found unlawful by the Board when used as a basis for a solicitation to report union activity. Under these circumstances and on the precedent cited I conclude that the solicitation to report here has the proscribed "potential dual effect" described in *J. H. Block, supra*. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act as alleged in the distribution of the May 21 leaflets.

E. *The Reprimand of Jean Kiel*

Jean Kiel was employed by Respondent as a secretary to George Marrow, the administrative assistant of the director for development, fifth division, at the Y-12 facility, and worked in building 9202. She had worked for a total of 8 years for Respondent but had a break in that employment and had begun her second period of employment about 2 years prior to the hearing. Kiel was described by William H. Dodson, director of development, as "one of the best" workers, and had been rated as "superior" during performance ratings in April. She had received a wage increase in May. Prior to May 29 she had never been warned or reprimanded regarding any aspect of her work.

On April 16 Kiel became involved in activity on behalf of the Union. In connection therewith Kiel posted notices regarding union meetings on bulletin boards at the Y-12 facility as well as on restroom and cafeteria walls, building walls, and facility buses. On May 27 Kiel was called into the office of Marrow, who advised Kiel that another employee had complained to Dodson that she was posting notices during working hours. He advised her that she was not supposed to do that. Kiel admitted that she had posted the notices but added that she had been careful not to do it during working hours. According to the testimony of Kiel, a very convincing and credible witness whose testimony was largely uncontradicted, Marrow appeared to be satisfied with her responses and the discussion of the matter ended.

On May 29 Kiel was again called into Marrow's office and confronted by both Marrow and his superior, Dodson. Dodson told Kiel that he had received two complaints about her union activities, the one that had already been discussed with Marrow on May 27 and the second involving a complaint from an employee at the X-10 plant that Kiel had spoken to her by telephone regarding union activities. Dodson told Kiel with respect to the first complaint that he was satisfied she had not posted notices during working time. With respect to the remaining complaint Dodson was either unwilling or unable to identify the complainant, but Kiel did not deny generally that she had telephoned an employee at the X-10 plant regarding union activity. Dodson admonished Kiel not to use the telephone for union activities because it took up her time as well as the other person's time. Kiel responded that she had not used the telephone for union calls any more than other secretaries in the division had used it for personal calls. According to Kiel, in the ensuing discussion Dodson told Kiel that she was not to use the telephone for personal calls at all explaining that he had to make it that strict because it was the only way he could have control over whether it was a personal call or a union call. Kiel complained that this was overly restrictive but Dodson cited the Company's phone book containing provisions prohibiting the use of company telephones for personal calls. Dodson went on to tell Kiel that she was not to talk with other employees about the Union except before or after work, during lunch hours, and when she and the other employees were on their own time. In addition, he told her that she could post union notices on the bulletin boards coming into the plant, but she should recognize that they would be removed. Further, Kiel was told by Dodson that she was not to use the interplant mail for any union communications. Finally, Dodson told Kiel that if she did not

follow these guidelines she would be subject to disciplinary action.

On May 30 after confirming with Marrow her understanding of the limitations explained by Dodson and in keeping with those limitations Kiel rejected a personal telephone call from her daughter's high school. Because of this she apparently became visibly upset. This was reported to Dodson who came to Kiel and in the ensuing discussion explained to Kiel that she had misunderstood his earlier instructions and had overreacted. He said that Kiel could use the telephone for personal calls but not for union activities. He added that the telephone was for business use only, although it was Respondent's accepted policy for employees to use it for some personal calls. Kiel thereupon asked for written guidelines but Dodson denied her request.

According to Kiel employees had previously been allowed to use the telephone for local personal calls, and she knew of no one who had been reprimanded for this. Moreover, she said that secretaries such as herself had previously been allowed to engage in personal nonwork related discussions among themselves during worktime. Kiel admitted in her testimony that she had used her business telephone to talk to two employees at the X-10 plant as well as some employees at the Y-12 and K-25 plants regarding union matters. However, she estimated that such calls which had averaged about two per day were no greater in number or longer in duration than the local personal calls which she was accustomed to making. In addition, she testified that during the period when she made the telephone calls regarding the Union she stopped making her customary personal calls.

Based on Kiel's testimony,[5] the General Counsel contends, in effect, that Dodson's restrictions imposed on Kiel coupled with the threat of disciplinary action for breach of the restrictions constituted disparate and discriminatory treatment in violation of Section 8(a)(3) and (1) of the Act. In short, the General Counsel argues that the restrictions imposed on Kiel were "simply to discourage discussion about, and solicitation for, the Union on Company premises and to punish" Kiel by withdrawing unrestricted telephone usage as a condition of employment.

Respondent, on the other hand, argues that it has consistently restricted the personal use of its telephones. In keeping with this policy of restriction its telephone book states that personal calls were to be made only in an emergency and "must be placed collect, billed to personal credit cards, or billed to your residence telephone." Further, Respondent introduced a number of exhibits in evidence consisting of several back issues of its employee newspaper containing a question box column answering several questions on personal use of Respondent's telephones by employees.[6] Still further, Respondent points to a memo of Dodson in May 1979, to various supervisors in his division relative to abuses in telephone usage in which it is stated that the impression should be made on people that "the phones are business phones and should not be used except for business reasons or personal reasons of a type that we would allow personal leave."[7] Lastly, Respondent relies on a regulation set forth in its employee handbook, "You at Union Carbide" (Resp. Exh. 2) generally distributed to employees, which states that "Plant telephones are for the conducting of Company business only. You must refrain from making unnecessary calls." The handbook also contains the following no-solicitation rule which is cited in Respondent's brief:

> Unless authorized by the Plant Superintendent or Laboratory Director, you are forbidden to solicit, sell tickets, collect, transact any business, or indulge in any activity not related to your employment on Company time.

Respondent's brief refers to the foregoing rule as a valid no-solicitation rule. The General Counsel's brief refers to it as an unlawfully overly broad rule, although the rule was not alleged as a violation of the Act in the complaint.

It is clear from the credited evidence that Respondent, notwithstanding all its stated policies regarding the use of its telephones, had allowed Kiel and other clerical employees to use its telephones for personal reasons. Dodson acknowledged as much in his testimony. It is further clear that, on May 29 and 30, Kiel was chastized and threatened with discipline for any further use of her telephone for union-related matters. She was, however, allowed on May 30 and thereafter to use the telephone for personal reasons to the extent she had done so in the past except for union matters. Accordingly, Respondent did, I conclude, discriminatorily apply its telephone use restrictions against union activities. The issue is whether it was privileged in doing so.

It is well established that an employer may bar union activities including union solicitation on worktime. See, e.g., *Essex International, Inc.*, 211 NLRB 749 (1974). But it may not bar union solicitation on worktime where it allows employees to engage in other forms of solicitation during worktime. See *The Timken Company*, 236 NLRB 757 (1978); *Maremont Corporation*, 229 NLRB 746 (1977); *Walton Manufacturing Company*, 126 NLRB 697 (1960). Where it enforces its work rules in a disparate manner against union activities an employer violates Section 8(a)(1) of the Act. In the absence of a formal and valid no-solicitation rule an employer may discipline an employee for solicitation but has the burden of showing that the solicitation resulted in actual work interference. See *Midwest Stock Exchange, Incorporated; Midwest Clearing Corporation; Midwest Securities Trust Co.; Midwest Stock Exchange Service Corporation*, 244 NLRB 1108 (1979).

In the instant case, I conclude that, as pointed out in the General Counsel's brief, Respondent's no-solicitation

[5] Kiel's credibility has already been noted. Dodson testified for Respondent but couched his testimony in more general terms. I credit Kiel wherever her testimony may be viewed as contradicting that of Dodson.

[6] Such answers related essentially to personal use of telephones for long-distance or toll calls or other extraordinary usage, and clearly indicated a company policy against this type of personal use.

[7] The reference to the use of personal leave apparently meant that the personal use of the telephone was acceptable if it were used to handle matters which would otherwise require the expenditure of personal leave, i.e., matters which would take the employee from his job.

was overly broad and unlawful. See *Stoughton Trailers, Inc.*, 234 NLRB 1203 (1978). This is because the phrase in the rule barring solicitation on "company time" has been held by the Board to be reasonably susceptible to the interpretation that an employee may not engage in solicitation while the employee is on the clock even at a time the employee has finished his work and is in a nonwork area. *Florida Steel Corporation*, 215 NLRB 97 (1974). Respondent's rule therefore serves as no defense to disparate application of restrictions without an affirmative showing by Respondent of actual work interference by Kiel.

Applying the foregoing principles to the instant case, Respondent could unquestionably bar its telephones to any personal use by employees, but once it grants the employees the privilege of occasional personal use of the telephone during worktime, including the privilege of calling other employees at work, it would appear that it could not lawfully exclude the Union as a subject of discussion particularly where, as here, no actual work interference has been shown.

There can, of course, be an abuse of any privilege and Respondent would be within its rights to police any abuses. But, I conclude, absent any such abuse not shown here, it was unlawful for Respondent to disparately apply its phone policy in the manner it did here. See *K-Mart Corporation*, 255 NLRB 922 (1981). Thus, I find and conclude that under the circumstances here Respondent discriminated against Kiel in violation of Section 8(a)(3) and (1) in limiting her personal use of her business telephone including barring her from union discussions or solicitations.

Moreover, although not alleged in the compalint, I find that Respondent violated Section 8(a)(1) of the Act by maintaining an overly broad no-solicitation rule in its employee handbook. Respondent itself submitted the rule in evidence and has relied on it in defense of other complaint allegations to the extent that the legality of the rule has been brought into issue. Under such circumstances, the absence of a complaint allegation does not preclude the finding of the violation which I have made on the rule. See *Jax Mold & Machine, Inc.*, 255 NLRB 942 (1981); *The Timken Company, supra.*

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By removing notices of union meetings from its bulletin boards; by confiscating notices of Union meetings from its employees; by removing an employee petition concerning union and protected concerted activities from a nonwork area; by threatening employees with loss of personal leave and sick leave benefits if they selected the Union as their collective-bargaining representative; by soliciting employees to report the identity of other employees who engage in union activity or ask them to sign union cards; and by maintaining a no-solicitation rule which prohibits employees from soliciting for the Union in work areas during their nonworking time, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By discriminatorily restricting its employee Jean Kiel in personal conversations and the use of its telephones, and by threatening Kiel with discipline for the violation of such unlawful restrictions Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and that it take certain affirmative action necessary to remedy the unfair labor practices and to effectuate the policies of the Act, to include the usual posting of appropriate notices. In my opinion, since the unfair labor practices found herein directly affected employees of two of Respondent's Oak Ridge plant facilities, and because the policies of Respondent underlying the violation found, particularly with respect to bulletin board useage, telephone useage, and no-solicitation rule appear to be applicable to all of the Oak Ridge plant facilities, effectuation of the policies of the Act will best be achieved by requiring Respondent to post the notices to employees hereinafter recommended at all three of the Oak Ridge facilities.

With respect to the reprimand of Jean Kiel the record does not establish that such reprimand amounted to any more than a threat of discipline. There was no showing the threat was ever reduced to written form nor does it appear that any record was made of any disciplinary action regarding Kiel. Thus, there appears to be no basis for an order for expunging any respondent record on Kiel. However, Respondent shall be ordered to retract the threat of discipline of Kiel and so advise her in writing.

Upon the foregoing findings of facts, conclusions of law, and the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended

ORDER[8]

The Respondent, Union Carbide Corporation-Nuclear Division, Oak Ridge, Tennessee, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unlawfully removing from its bulletin boards notices of meetings of Office and Professional Employees International Union, AFL-CIO.

(b) Unlawfully confiscating from employees notices of union meetings or other union-related material.

(c) Unlawfully removing employee petitions concerning union or protected concerted activity from nonwork areas.

(d) Threatening loss of personal leave and sick leave benefits if employees select a union to represent them.

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(e) Soliciting employees to report the identity of other employees who engaged in union activity or ask them to sign union cards.

(f) Discriminatorily restricting employees in their personal conversations at work or in the personal use of telephones or threatening with discipline employees who breach such restrictions.

(g) Maintaining a no-solicitation rule which prohibits employees from soliciting for unions in work areas during their nonworking time.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Retract the threat of discipline issued to Jean Kiel and so advise Kiel in writing.

(b) Post at its three Oak Ridge, Tennessee, plant facilities copies of the attached notice marked "Appendix."[9] Copies of said notice, on forms provided by the Regional Director for Region 10, after being duly signed by a representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed only insofar as it alleges unfair labor practices not found herein.

[9] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives all employees these rights:

To engage in self-organization
To form, join, or help a union
To bargain collectively through a representative of your own choosing
To act together for collective bargaining or other mutual aid or protection
To refrain from any or all of these things.

WE WILL NOT unlawfully remove from bulletin boards notices of meetings of the Office and Professional Employees International Union, AFL-CIO.

WE WILL NOT unlawfully confiscate from employees notices of union meetings or other union-related material.

WE WILL NOT unlawfully remove employee petitions concerning union or protected concerted activity from nonwork areas.

WE WILL NOT threaten employees with loss of personal leave and sick leave benefits if they select a union to represent them.

WE WILL NOT solicit employees to report the identity of other employees who engage in union activity or ask them to sign cards.

WE WILL NOT enforce any rule which prohibits employees from soliciting in behalf of any union in work areas during nonworktime.

WE WILL NOT discriminatorily restrict employees in their personal conversations at work or in the personal use of business telephones and WE WILL NOT threaten with discipline employees who breach any such discriminatory restriction.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL retract the discriminatory threat of discipline issued to Jean Kiel and so advise her in writing.

UNION CARBIDE CORPORATION-NUCLEAR DIVISION